



U.S. Note on Bribery of Foreign Political Parties, Party Officials, and Candidates for Political Office in International Business Transactions

Note by the U.S. delegation submitted to the OECD Working Group on Bribery in International Business Transactions for its meeting November 3–5, 1998.

I. Introduction

Under the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, bribes offered or paid to foreign political parties, party officials, or candidates for political office are not explicitly covered. The definition of “foreign public official” in Article 1(4)(a) does not include political parties, party officials, or candidates. Commentary No. 16 states that, under the legal principles of some countries, persons who exercise de facto public authority (e.g., political party officials in single party states) may be considered to be foreign public officials. Also, it is noted in Commentary No. 10 that, under the legal systems of some countries, an advantage promised or given to any person in anticipation of that person becoming a foreign public official would be covered by the Convention. It is not clear how many OECD members would fall into one or both of

these categories, but it appears that such members would be in the minority.

II. Working Group Consideration

During the negotiation of the Convention, the United States urged that bribes offered or paid to foreign political parties, party officials, or candidates for political office be explicitly covered. Such explicit coverage is provided in the U.S. Foreign Corrupt Practices Act (FCPA). (See 15 U.S.C. 78dd-1(a)(2), 78dd-2(a)(2).) Consensus support for inclusion of political parties, party officials, and candidates could not be achieved, as a number of delegations objected to defining such persons as “public officials”. However, the OECD Council agreed that treatment of political parties, party officials, and candidates was one of several issues meriting additional examination by the Working Group on Bribery in International Business Transactions. In December 1997, the Council issued its Decision on Further Work on Combating Bribery in International Business Transactions (C(97)240/FINAL), in which it requested that the Working Group examine on a priority basis several issues

with a view to reporting conclusions to the 1999 OECD Council meeting at Ministerial level, including:

- bribery acts in relation with foreign political parties; and
- advantages promised or given to any person in anticipation of that person becoming a foreign public official.

III. Policy Concerns

The Preamble to the Convention sets forth several of the primary reasons why bribery in international business transactions is a pernicious practice:

- Such bribery raises serious moral and political concerns;
- It undermines good governance and economic development; and
- It distorts international competitive conditions.

These concerns apply no less to bribes offered or paid to political parties, party officials, or candidates than to bribes offered or paid to government officials. Although political party officials may not hold public office, they play an important role in the democratic process and wield special authority and influence within the political system. For their part, candidates represent potential public authority, contingent upon their election or appointment. Thus, corruption on the part of political party officials or candidates can be said to constitute a breach of the public trust. Bribes to political parties, party officials, or candidates are no less pernicious than bribes to government officials.

Moreover, there is a danger that individuals and companies will interpret lack of coverage of political parties, party officials, and candidates under the Convention as a loophole to be exploited, offering a roadmap for bribers who can no longer safely bribe government officials. Such circumvention would undermine the effectiveness of the Convention.

To the extent that some members of the Working Group may have had difficulty in accepting a definition of “public official” that embraces political parties, party officials, and candidates, it is not necessary that these categories of persons be included within the definition of “public official”. If the member nations agree that the bribery of political parties, party officials and candidates should be prohibited, such persons can be defined without regard to any consideration as to whether they are, or are not, “public officials”.

It should be underscored that this discussion concerns only bribes paid to political parties, party officials, or candidates in order to obtain or retain business or other improper advantage in the conduct of international business. Issues

relating to campaign financing are outside the scope of the Working Group’s current examination.

IV. Scope of the Problem

The experience of the United States in enforcing the Foreign Corrupt Practices Act (FCPA) over a 20-year period has demonstrated that bribery of political parties, party officials, or candidates for political office occurs in international business transactions. The very first case brought under the FCPA involved a payment to a political party and party officials for the purpose of paying for the transportation from New Zealand to the Cook Islands of a sufficient number of voters to ensure the re-election of a legislative majority for the ruling political party and the head of the party, Prime Minister Sir Albert Henry. (*U.S. v. Kenny International Corporation*, D.D.C. 1978.)

Numerous reports in the international media in recent years have alleged that the payment of bribes to political parties, party officials and candidates has been used to secure government business. (See Room Document 1, 4th November 1998). In countries in which there is only one political party, or

in which a single party is predominant, parties and their officials may exercise substantial influence over the award or retention of government business. In addition, bribery of a candidate for office may appear attractive in any situation in which it appears that the candidate is likely to be elected or appointed, and will then have authority to award business to or retain business for the bribing person.

V. Conclusion

Taking measures to prevent the bribery of political parties, party officials, and candidates in international business transactions would be consistent with the objectives of the Convention and would contribute to more effective anti-corruption efforts.